88-1101 (1)

No.

Supreme Court, U.S.
FILED
DEC 28 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1988

EUNICE C. MADISON,

PETITIONER,

v.

DISTRICT OF COLUMBIA
RENTAL HOUSING COMMISSION,

RESPONDENT,

CLIFTON TERRACE
ASSOCIATES, Ltd. et al.,

INTERVENOR.

Petition For A Writ Of Certiorari
To The District Of Columbia
Court Of Appeals

EUNICE C. MADISON
Pro Se

1350 Clifton Street NW. #516
Washington, DC.
(202) 232-7253

14 pp

QUESTIONS PRESENTED

1. Whether Intervenor, Clifton TerraceAssociates, Ltd., was invalidly subsidized on June 1, 1983 when the events com-complained of by petitioner occurred: i.e. severe rent increase without thirty days notice, apartment in poor condition, and guard service severely cut which resulted later in vandalism.

2. Were appellant's constitutional and statutory rights violated by denial of due process in the hearings with hearing examiner.

3. Whether the claim of lack of jurisdiction in the Rental Housing Commission is misplaced, since it was the Rent Administrator who claimed lack of jurisdiction erroneously, because he assumed jurisdiction in issuing a subpoena, and in addition he has primary jurisdiction, and also jurisdiction over Titles IV, V,, VI, and VII, as well as Title II of District of Columbia Law 3-131 (1980).

4. Whether it was abuse of discretion

QUESTIONS PRESENTED (Continued)

on the part of the District of Columbia Court of appeals and Rental Housing Commission not to consider that the former Rental Housing Commission had remanded the case for a hear-- ing on thbmerits of non-exemption from rent-control, Whether it was error for thrm to in-sist that Petitioner should apply for sub-sidy when HUD regulations forbid it.

5. Whethe r the interpretation of the rent control law as made in t his case is over-broad when it includes freedom from housing code violations and the usual procedural safe-guards between landlord and tenant

6. Whether the state of the lost records and documents and photogpaphs in the Rent Adminis - trator's and Rental Commission Offices fail to meet the tes t of substantial evidence in the record.

CIST OF PARTIES

The parties to the proceeding below were Eunice C. Madison, pro se., Clifton Terrace Associates, Ltd., , and Phoenix Management Services.

IN THE SUPREME COURT

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EUNICE C. MADISON,

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DISTRICT OF COLUMBIA
RENTAL HOUSING COMMISSION,

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Petition For A Writ Of Certiorari
To The District Of Columbia
Court Of Appeals

Eunice C. Madison respectfully prays that a writ of certiorari issue to review the memorandum decision of the District of Columbia Court of Appeals entered on July 15, 1988.

OPINIONS BELOW

The Memorandum Decision of the District of Columbia Court of Appeals is included in the Appendix at 2a. Petitioner filed petition for rehearing or rehearing en banc, and the District of Columbia Court denied the petition on August 30, 1988. Copy of the denial is included in the Appendix at 3a.. Petitioner filed a motion for stay of the mandate pending application for a writ of certiorari to the Supreme Court of the United States, and the District of Columbia Court of Appeals denied the motion on September 15, 1988. A copy of the denial is included at 4a in the Appendix.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Chief Justice Rehnquist extended the time for filing this petition to December 28, 1988.

STATEMENT OF THE CASE

This case begins with the purchase by a North Carolina partnership of the Clifton Terrace Apartments, a three-building complex, located in northwest Washington between 13th and 14th streets northwest. The purchase was made on June 3, 1983.

The property was in a badly deteriorated condition and was sold "as is" with the covenant that rehabilitation be completed within six months, after which subsidies would be available under Section 8 of the National Housing Act, up to 100% of the tenants.

Petitioners' apartment, an efficiency unit, was also in a bad state of repair, it not having been painted for thirteen years. There were great holes in the walls and ceiling, falling plaster and discoloration on walls and ceiling. and broken windows.

Despite these conditions the new landlord, Clifton Terrace Associates, Ltd., Intervenor, averred that the property was in good and tenant-

able condition, and that he had a certificate of occupancy for 1350 Clifton Street N.W., the building in which Petitioner's apartment is located. However, he did not even apply for a certificate of occupancy for that building until October 21, 1983, and did not obtain it until February 20, 1985. Intervenor, Clifton Terrace Associates, Ltd. did not even own the building until June 3, 1983. Yet, on the basis of their averments, they were permitted to become subsidized, i.e., enter the Housing Assistance Payments (HAP) contract with the United States Department of Housing and Urban Development (HUD). before even owning the property.

The procedure is first to enter into an Agreement-To-Enter-Into-Housing-Assistance-Payments contract before rehabilitation is begun.

After rehabilitation is completed, but not before, such completion, can the owner increase the rents to the contract rents listed in the HAP CONTRACT.

As a result, of becoming subsidized immediately , instead of having to wait till rehabilitation was completed Intervenor could then increase his then current rent roll of $606,084, immediately to $1,724,472. They have had many rent increases since then, none of which have been effected by the method required by HUD including tenant participation, in accordance with 24 C.F.R.§§ 246.22, and 245.

Despite the poor conditions in petitioner's apartment, Intervenors increased her rent from $138 per month to $259 per month without a thirty-day notice, as required by District of Columbia and Federal law and due process..

- District of Columbia law 3-131 §905(b) states:

> No rent increases, whether pursuant to this act, . . . or any administrative decisions thereunder , shall be effective until the first day on which rent is normally paid occurring more than thirty (30) days after notice is given to the tenant.

District of Columbia law 3-131 §901

Penalties (a)(2) states:

> (a) Any person who knowingly:
> (2) Substantially reduces or eliminates services previously provided for a rental unit shall be held liable by the Rent Administrator, or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount and/or for a roll back of the rent to such amount as the Rent Administrator or Rental Housing shall determin (Emphasis added).

In addition to the unconscionable rent increase, Intervenors decreased the security service guards from eight guards per eight-hour shift for a three-shift day to approximately one guard per night and two per weekend. Finally they eliminated all guard service. Such action was proximate cause of severe vandalism, ransacking and theft which occurred in Petitioner's apartment.

Now maintenance has dropped to a bare minimum. There has been no elevator service for three years, and before that it was sporadic. Housing code violations are not acted upon. A

Petition was signed by many tenants recently and sent to owners and management, asking for action on some deficiencies. George F. Marshall sent a long letter, saying that he had applied to HUD for money to fix things. In his letter he stated that when he purchased Clifton Terrace, it was a disaster area like Germany after the last world war. This is contrary to what he said in 1983 to obtain the HAP contract, but it confirms that he misrepresented conditions then. He stated that there were many vacancies then. Still many now exist, as is evidenced by the many boarded up apartments.

It appears that they have over-broadly construed the rent control law to mean freedom from the landlord's duty to maintain property in a good tenantable condition,

meeting the implied warranty of habitability.

Petitioner knew nothing about rent control when the events of 1983 happened. she had not been given a notice in writing in accordance with D.C. Law 3-131 § 206(b):

> Prior to the execution of a lease or other rental agreement after the effective date of this act, a prospective tenant of any unit exempted under 206(a) shall receive a notice in writing advising him or her that rent increases for the accommodation are regulated by the Rent Stabilization Program. (emphasis added)
>
> § 206(d) Within ninety days (90) of of the effective date of this act, each landlord of any rental unit not exempted by this act and not registered under the Rental Housing Act of 1977, shall file with the Rent Administrator, on a form approved by the Rent Administrator, a new registration statement for each housing accommodation in the District of Columbia for which he or she is receiving rent or is entitled to receive rent. Any person who becomes a landlord of such a rental unit after the effective date of this act shall have thirty (30) days within which to file a registration statement with the Rent Administrator.

> One of the items to be included in the statement is §206 (d) (5) a list of any outstanding violations of the Housing regulations applicable to such accommodation or an affidavit by the building owner or manager that there are no known outstanding violations;

Petitioner filed a petition in the District of Columbia Department of Consumer and Regulatory Affairs with the Rental Accommodations Office on December 30, 1983, listing her four-part complaint : increase of rent without a thirty-day notice for "as is" housing. accompanied by a severe reduction in security guard services in an area where it is very essential and the latter was proximate cause of extreme vandalism and theft in her apartment.

The contact representative reccommended that she go to HUD, but that would have been of no help. They had sold the property, and it was not a respondeat superiore situation . Owners are free to make their own decisions with general guidance under the HAP Regulatory Agreement.

A hearing with the Rental Housing Commission was granted, after dismissal by the Rent Administrator. That resulted in the very brief hearing of December 4, 1984, dismissed very abruptly by the Hearing Examiner, Carl Bradford.

Appeal to the Rental Housing Commission resulted in a reversal of the foregoing examiner's decision and a remand for a hearing de novo. Commissioner Marlin, in his decision stated that what Examiner did not do "was to consider the arguments raised by Petitioner."

> These arguments include the alleged failure of the landlord to follow procedures required by HUD regulations to qualify the landlord for HUD pre-exemption from local rent control and her contention that her rental unit (#516) would not be exempt from rent control in any event because she pays market rate rent.
>
> The failure to consider her positions on their merits, and to make appropriate findings of fact and conclusions of law, violates the DCAPA and a host of judicial decisions interpreting these due process standards. Citizens Association of Georgetown v. District of Columbia Zoning Commission, 402 A.2d 36, 41-42 (D.C.1979).

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DISTRICT OF COLUMBIA
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RESPONDENT,

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Petition For A Writ Of Certiorari
To The District Of Columbia
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PETITIONER'S

APPENDIX

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APPENDIX

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FILED JUL 15, 1988

DISTRICT OF COLUMBIA

COURT OF APPEALS

No. 87-1082

EUNICE C. MADISON,

Petitioner,

v.

DISTRICT OF COLUMBIA
RENTAL HOUSING COMMISSION,

Respondent.

Petition for Review of a
Decision of the District of
Columbia Rental Housing Commission

(Submitted July 15, 1988
Decided July 15, 1988)

BEFORE: Pryor, Chief Judge, Newman and Schwelb, Associate Judges.

MEMORANDUM OPINION AND JUDGMENT

Petitioner appeals from the decision of the Rental Housing Commission dismissing her complaint challenging certain rent increases for lack of jurisdiction. After remanding the case to the Hearing Examiner for procedural irregularities on two previous occasions, the Commission upheld the Examiner's finding

that the Clifton Terrace Apartment complex is a federally subsidized housing accommdation and is therefore exempt from local rent control under D.C. Code §45-1516(a)(1) and 24 C.F.R. §§246.20, 246.21.

There is substantial evidence to support the Examiner's finding that the housing was federally subsidized. In fact, that finding has not been challenged before the Commission on appeal. Because the housing accommodation is federally subsidized, it is exempt from local rent control, regardless of the fact that Mrs. Madison has not applied for, and therefore has not received, a subsidy for her individual unit. Accordingly, the Rental Housing Commission has no jurisdiction to consider Mrs. Madison's complaints. Hearn v. Gross, 80 A.2d 285 (D.C. 1951). Accordingly, it is

ORDERED and ADJUDGED that the decision on appeal be and it is hereby affirmed.

FOR THE COURT

(Signed) Richard B. Hoffman
(Typed) Richard B. Hoffman
Clerk of the Court

FILED AUG 30 1988

DISTRICT OF COLUMBIA

COURT OF APPEALS

No. 87-1082

EUNICE C. MADISON,

Petitioner,

v.

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION,

Respondent.

BEFORE: *Pryor, Chief Judge; Mack, *Newman, Ferren, Belson, Terry, Rogers, Steadman, and *Schwelb, Associate Judges.

O R D E R

On consideration of the petition of petitioner for rehearing or rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of the court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that petition for rehearing en banc is denied.

PER CURIAM

FILED SEP 15 1988

DISTRICT OF COLUMBIA

COURT OF APPEALS

No. 87-1082

EUNICE C. MADISON,

Petitioner,

v.

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION,

Respondent.

BEFORE: *Pryor, Chief Judge; Mack, *Newman, Terren, Belson, Terry, Rogers, Steadman, and *Schwelb, Associate Judges.

O R D E R

On consideration of the pro se motion for stay of the mandate pending application for writ of certiorari to the Supreme Court of the United States, it is

ORDERED that the motion is denied.

PER CURIAM

IN THE SUPREME COURT

OF THE UNITED STATES

December 28, 1988

EUNICE C. MADISON,

PETITIONER,

v.

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION,

RESPONDENT.

Petitioner, Eunice C. Madison, prays this Honorable Court that a writ of certiorari be issued to review the Memorandum Decision of the District of Columbia Court of Appeals entered on July 15, 1988.

This case has been pending for five years and has gone through two panels of commissioners. The previous commissioners determined that petitioner should be permitted to prove her allegations that she made to the Rent Administrator five years ago.

The case at this point is not fully litigated. Mamy of the records have been

lost, apparently through carelessness. Petitioner prepared a transcript of the first hearing with a hearing officer, delegatee of the Rent Administrator. But Corporation Counsel did not admit the transcript.

The case involves rent control, and the argument is that petitioner is not a subsidized tenant. The District of Columbia has changed their rent control many times, and they have broadened it beyond its usual purpose of setting rents so that exempt landlords are to ignore housing codes and the safety and security of their tenants.

The National Housing Act's main purpose is the safety, security and welfare of their people. It is a disgrace how the project, Clifton Terrace is not kept up.

Yet the landlord is being paid millions in subsidies.

If the writ of certiorari does not issue, when tenants apply to the Rent Administrator, if the contact person determines that a housing project is subsidized, she summarily dismisses the petition. If it does not issue and this decision of the Court of Appeals stands, it will lead to the continuance of such a practice.

Petitioner respectfully prays that the writ of certiorari issue to the District of Columbia Court of Appeals.

Respectfully,

Eunice C. Madison
Petitioner, Pro Se

Certificate of Service

I, Eunice C. Madison, Petitioner, certify that I have mailed a copy of this document to Charles L. Reischel, 1350 Pennsylvania Avenue N.W. Washington, D.C. 20004, by first class postage prepaid, this 28th day of December, 1988.

Eunice C. Madison

IN THE SUPREME COURT

OF THE UNITED STATES

EUNICE C. MADISON	:	D.C.C.A.
PETITIONER	:	No, 87-1082
v.	:	RECEIVED
	:	HAND DELIVERED
DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION	:	NOV 15 1983
	:	OFFICE OF THE CLE
RESPONDENT	:	SUPREME Court U.S
CLIFTON TERRACE ASSOCIATES, LTD.	:	
INTERVENOR	:	

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

To The: Clerk of the United States Supreme Court.

Request is respectfully made for an extension of time to 60 days, if necessary, to file petition for a writ of certiorari to the District of Columbia Court of Appeals, in the above-entitled case.

The Memorandum Opinion of the District of Columbia Court of Appeals was filed July 15, 1983. (Encl.1)[1]. Eunice C. Madison, Petitioner, filed petition for rehearing or rehearing en banc, and the District of Columbia Court of Appeals denied the petition on

[1] See Appendix 1a.

August 30, 1988. (Encl.2)[2] Eunice C. Madison, Petitioner, filed a motion for stay of the mandate pending application for writ of certiorari to the Supreme Court of the United States, and the District of Columbia Court of Appeals denied the motion on September 15, 1988. (Encl. 3)[3]

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

The grounds for this Court to issue a writ of certiorari to the District of Columbia Court of Appeals is the extreme brevity of the decision after five years of litigation (the first petition was filed with the District of Columbia Rental Accommodations Office (now Rental Accommodations and Conversion Division) December 30,1983. The case has gone through two panels of Rental Commissioners. The change-

[2] See Appendix 3a

[3] See Appendix 4a

over occurred in July 1985. The first commission determined that violations of due process had occurred in the hearings under the aegis of the Rent Administrator, in that Petitioner had not been permitted to prove the allegations in her petition: increase of rent without thirty-day notice, while housing was in "as is" condition, accompanied by severe reduction in security guard services. The latter was proximate cause of severe, malicious vandalism which occurred in Petitioner's apartment shortly thereafter. She is an aggrieved person, with no adequate remedy at law, under the present interpretation.

The extension of time to file the petition for writ of certiorari is necessary because of the many laws and regulations involved: Federal and District of Columbia, and whose duty

it is to enforce each. There are various court decisions throughout the United States which must be researched. This court's consideration of the case may have results beyond the District of Columbia. Petitioner is an elderly tenant proceeding pro se (she was 76 years old when she filed her petition in December 1983). The events to make her an aggrieved person occurred in July 1983 upon the arrival of a new landlord, who purchased the Clifton Terrace Apartments on June 3, 1983. The new landlord was Clifton Terrace Associates, Ltd., located in Raleigh, North Carolina. Their management agent is Phoenix Management Services, also based in Raleigh, N.C. They are known as identity-of-interest organizations because similar officers participate in each.

It is respectfully prayed that the extension of time requested by Petitioner be granted.

Respectfully,

Eunice C. Madison
Pro Se
1350 Clifton Street, NW
Apartmemt 516
Washington, D.C. 20009
Phone (202) 232-7253

IN THE SUPREME COURT

OF THE UNITED STATES

EUNICE C. MADISON

PETITIONER

v.

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RESPONDENT

CLIFTON TERRACE ASSOCIATES, LTD.

INTERVENOR

RECEIVED
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DEC 16 1988
OFFICE OF THE
SUPREME COURT, U.S.

No. A-394
D.C.C.A. No. 87-1082

MOTION FOR ADDITIONAL EXTENSION OF TIME TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

To The: Clerk of the United States Supreme Court.

Request is respectfully made for an additional extension of time to January 27, 1989, to file Petition for a Writ of Certiorari to the District of Columbia Court of Appeals, in the above-entitled case.

The Memorandum Opinion of the District of Columbia Court of Appeals was filed July 15, 1988. Eunice C. Madison, Petitioner, filed Petition for rehearing or rehearing en banc, and the District of Columbia denied the petition on August 30, 1988.

Eunice C. Madison, Petitioner, filed motion for stay of the mandate pending application for writ of certiorari to the Supreme Court of the United States, and the District of Columbia Court of Appeals denied the motion on September 15, 1988. Copies of the foregoing opinions and denials were filed by Petitioner, with her motion of November 15, 1988.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The assertion by Respondent and Intervenor, supported by the Court of Appeals is not supported by substantial evidence in the record. Petitioner objected to the lack of several documents and exhibits, such as photographs, in the Record, as certified to the Court of Appeals by Respondent, the District of Columbia Rental Housing Commission. She filed a lengthy supplemental record to overcome such lack, including a trans-

cript of the first truncated hearing of December 4,1984. Respondent objected to such inclusion by motion, and the District of Columbia allowed such motion. The recorded tapes of all the hearings with Hearing Officer, Carl Bradford, have been lost including two tapes of hearings with the former Rental Commission. The successor Rental Housing Commission,therefore, apparently never listened to any of these tapes.

The Intervenor, Clifton Terrace Associates, Ltd., was not validly subsidized in 1983 when the injuries to Petitioner occurred, because they had not met the eligibility criteria required by 24 C.F.R. §886.304 (b):

> (b) Projects needing repairs, A project which is sold subject to the condition that following sale the project will be repaired by the owner so as to become decent

> safe and sanitary will be sold with an Agreement that Section 8 assistance will be provided after the repairs are completed by the owner and the project is inspected and accepted by HUD. In these projects, Section 8 payments may be made only for project units which are determined to be decent, safe and sanitary. (Emphasis supplied).

The "as is" condition under which the Clifton Terrace Apartments were sold to intervenor is ample evidence that the foregoing requirements had not been met.

Another requirement of the National Housing Act is to remove the blight of slums from the urban scene. Thus, Intervenor is not validly subsidized even now because they are continuing that blight.

The assertion that Petitioner should apply for assistance is misplaced. She was an unassisted tenantwhen the property was sold, and there is no requirement in law or HUD regulations that she should apply for assistance. She was a tenant in the property when it was sold. She had the prop-

erty interest of long leasehold,

of which she could not be deprived, except by due process. Petitioner pointed out to the Rental Housing Commission and the District of Columbia Court of Appeals that 24 C.F.R. §246.20 excludes unassisted tenants such as Petitioner as follows:

> This subpart also applies to mortgages insured or held by HUD that receive housing assistance payments pursuant to contract covering fewer than all units in the project, but only with respect to those units occupied by tenants receiving housing assistance thereunder. (Emphasis supplied)

As for jurisdiction, the plea of lack of it is contradicted by the fact that the Rent Administrator assumed jurisdiction when he used his authority November 30, 1983 [1] to obtain a subpoena, directed to a Mr. Tahash, of the United States Department of Housing and Urban Development. The copy of this subpoena was omitted from the certified record sent to the District

[1] This date should be 1984.

of Columbia Court of Appeals. A copy of it was provided with her brief to the District of Columbia Court of Appeals. In addition , the Rent Administrator has jurisdiction over other parts of the Rental Act, D.C. Code 3-131 (1980) such as Retaliatory Action, discriminatory actions against senior citizens, and penalties for illegal rental charges.

In addition they are required to conduct hearings in accordance with the District of Columbia Administrative Procedures Act, D.C. Code §§ 1-1501 et seq. Not to do so deprives petitioners of constitutional and statutory rights.

It is an abuse of discretion on the part of the District of Columbia Court of Appeals to decide this case with the very brief Memorandum Opinion and Judgment of July 15, 1988.

Due to the complesity of Federal and District of Columbia laws and regu-

lations, and the inadequacy of the judgment of the District of Columbia Court of Appeals, Petitioner, Eunice C. Madison, needs additional time to complete her research to plead her case. She is also attempting to research the legislative history of the matter of subsidizing Federally and District subsidized properties.

It is respectfully prayed that this additional extension of time requested by Petitioner be granted.

Respectfully,

Eunice C. Madison
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Phone (202) 232-7253

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM, 1988

The following correction is made in D.C. Law 3-131 §206(b) quoted on page 3 of original Petition For A Writ Of Certiorari To The District Of Columbia Court Of Appeals: The word "not" which was omitted on page 8 is underlined below.

> Prior to the execution of a lease or other rental agreement after the effective date of this act a prospective tenant of any unit exempted under 206(a) <u>shall</u> receive a notice in writing advising him or her that rent increases for the accommodation are <u>not</u> REGULATED BY THE Rent Stabilization Program. (emphasis added)

Eunice C. Madison
Petitioner, Pro Se